IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 116 of 1985
For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

Z B VAZIFDAR VETERNIARY OFFICER

Versus

STATE OF GUJARAT

Appearance:
MR S TRIPATHY for the Petitioner.
Mr.Sood, Assistant GOVERNMENT PLEADER,
for Respondent Nos. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/11/2003

ORAL JUDGEMENT

1. By filing tis petition, the petitioner has prayed for necessary writ, order or direction, directing the respondent, the State of Gujarat, to treat the petitioner as eligible for promotion to the Scale of Rs.650-1200 in the Gujarat Animal Husbandry Services Class II. The petitioner has also prayed in Clause (C) of Paragraph 27 that the decision taken by the State Government to

promote 19 junior Officers to the petitioner may be quashed and set aside. It is also prayed by the petitioner that Rule 2(a) of the Gujarat Animal Husbandry Services Class II Recruitment Rules, 1972 and other incidental Rules be quashed and set aside on the ground that the same do not prescribe any guideline to be observed for determining the merit or efficiency of an Officer at the time of promoting such Officer to the Grade of Rs.650-1200.

2. As per the averment in the petition, the petitioner was recruited as a Veterinary Officer in Class III cadre by the Government of Gujarat on 3rd July, 1969. The said post was later on classified as a Class II post and the pay scale of Rs.550-900 was prescribed for the same. The petitioner was also promoted to Selection Grade with effect from 3.7.1979. As per the averment in the petition, he was also allowed to cross Efficiency Bar in the scale of Rs.550-900, as, according to the petitioner, proved merit and efficiency was found present in the case of the petitioner, and, accordingly, he was allowed to cross EB. Subsequently, when the question about promoting the petitioner to the post of Officer in the Gujarat Animal Husbandry Services Class II in the scale of Rs.650-1200 arose, the petitioner was not found fit for getting such promotion. As per the Recruitment Rules framed by the Government for the purpose of recruiting Officers to the Gujarat Animal Husbandry Services Class II, in the scale of Rs.650-1200, the said promotion can be given either by way of promotion of Officers from the scale of Rs.550-900, or by way of direct recruitment. The petitioner has also quoted in the petition, Rule 2(a) of the Gujarat Animal Husbandry Services Class II Recruitment Rules, 1972 and the same reads as under :-

" ... ...

By promotion of a person of proved merit and efficiency in Gujarat Animal Husbandry Services, Class III, who possess the qualifications and experience specified in Rule 3(b) and has passed the prescribed Departmental Examination.

... ..."

3. The grievance of the petitioner is that when he was allowed to cross EB, there was no reason not consider him fit for promotion even on the basis of merit-cum-efficiency. As per the averments in paragraph

6 of the petition, the petitioner came to know that the Government, by its Notification dated 13th November, 1984, decided to promote 23 Officers, who are in the pay scale of Rs.550-900 to the pay scale of Rs.650-1200 in the Gujarat Animal Husbandry Services, Class II. It is the say of the petitioner that except four employees, rest of the employees are junior to the petitioner. According to the petitioner, not only the aforesaid 19 employees are juniors to him, but out of them, 9 have not been allowed promotion to the Selection Grade and yet the said 9 persons were found eligible for such promotion. Under these circumstances, the petitioner has approached this Court for a direction to the Government to treat the petitioner as eligible for getting promotion to the said Grade. He has also prayed for setting aside the decision of the Government, promoting 19 Officers, who are junior to the petitioner.

4. It is required to be noted that the petitioner has not even joined those 19 Officers, whose promotion order is under challenge at the instance of the petitioner. It was the duty of the petitioner to join those persons, who are likely to be adversely affected in case the prayer made in the petition is to be granted. Since the petitioner has not joined the relevant persons as parties, no relief can be given to the petitioner so far as the action of the State Government in promoting those employees, which is impugned in this petition is concerned.

5. So far as the challenge of the petitioner to various Rules is concerned, the said Rule provides that at the time of giving promotion in the pay scale of Rs.650-1200, proved merit-cum-efficiency is required to be taken into consideration. In this behalf, it has been pointed out by Mr.Sood, learned AGP, that while deciding the question of merit and efficiency of the candidate, the service record and past C.Rs. are taken into consideration. He submitted that there were six adverse remarks against the petitioner between the period 1st April, 1979 and 31st March, 1980. If merit or efficiency of the candidate is to be considered, there is nothing wrong if service record and C.Rs. of past few years are taken into consideration. The petitioner is, therefore, not able to point out as to how the Rules framed by the Government are arbitrary or discriminatory in nature. As pointed out above, merit is to be considered in the light of the service record of the concerned Officer. There is absolutely no basis or foundation for attacking the aforesaid Rules which prescribe criterion of merit-cum-efficiency for the purpose of considering the

employee for promotion to the higher grade of Rs.650-1200.

6. So far as the decision of the Government not to consider the petitioner for the aforesaid post in the aforesaid pay scale is concerned, one Mr.D.V. Mokashi, Director of Animal Husbandry, Gujarat State, has filed an affidavit-in-reply. Paragraphs 2 and 3 of the said affidavit-in-reply read as under :-

" ... ...

2. I say that the main grievance of the petitioner that he has not been promoted to the grade of 650-1200 in Gujarat Animal Husbandry Services Class-II though he is eligible for such promotion. I say that prior to 21st October, 1975, there were two grades for Veterinary Officer viz. Grade-I and Grade-II. By G.C.S. (Revision of Pay) Rules 1975 as per GNED No.PCR-1275-69-R dated 21st October, 1975 the aforementioned gradation has been abolished and since then all the officers are known as Veterinary Officer only. The regular pay scale for the said officer is Rs.550-900 with selection grade of Rs.650-1040 for 20% of the post. I say that a meeting of the Selection Committee was held on 1st October, 1983 to consider the question of giving promotions to higher scale to Veterinary Offices working in the Animal Husbandry Department. I say that the said Committee consisted of three persons viz., Shri K.D. Parmar, Dy. Secretary to the Government of Gujarat, Agriculture and Forest Department, Shri T.N. Vaishnav, Director of Gujarat Animal Husbandry, Gujarat State, and myself as Joint Director of Animal Husbandry. I say that the said Selection Committee had considered the names of 41 Veterinary Officers in all for promotion to the higher grade, and after due deliberation and considering the Confidential Reports of the Officers concerned, had decided not to recommend the names of six officers for promotion to the higher scale. The petitioner was one of the said six officers. I say that as the above posts for which promotion was to be considered falls within the purview of the Gujarat Public Service Commission, it is necessary to consult the said Commission. Accordingly, after receiving the reports of the said Selection Committee the Government had referred the matter to the Gujarat

Public Service Commission and the said Commission has concurred that the petitioner should not be promoted to the higher scale.

3. I say that the Confidential Reports of the petitioner for the five years immediately preceding the meeting of the said Selection Committee were found to be not quite satisfactory in the whole. I say that there were several adverse remarks in the Confidential Reports of the petitioner. For the period from 1st April, 1979 to 31st March, 1980, there were in all six adverse remarks against the petitioner. Out of the said six adverse remarks, one remark relating to the slow progress of vaccination in the Taluka in which the petitioner is posted was deleted. The remaining five adverse remarks were however retained. For the period from 1st April, 1980 to 4th September, 1980 there were several adverse remarks against the petitioner. The petitioner had not made any representation against the said adverse remarks.

... ..."

There is no rejoinder to the said affidavit-in-reply.

7. It may be true, as pointed out by the petitioner that adverse remark for one year was expunged. However, still five adverse entries continued in the service record. The Committee has considered the aforesaid aspect and, ultimately, the Gujarat Public Service Commission concurred with the decision of the Committee for not recommending the case of the petitioner for promotion to the said scale. In view of the aforesaid affidavit-in-reply, as well as in view of the fact that while considering the question whether the petitioner is fit for promotion as per Rules, the Committee, ultimately, considered the confidential record of the petitioner and, on an overall assessment of the said record, if it was found that he was not fit for promotion as per the Rules, it cannot be said that the said decision is in any way arbitrary or illegal. Validity of the Rules is challenged on the ground that they do not prescribe any guideline to be observed for determining the merit or efficiency of an Officer at the time of promoting such Officer to the Grade of Rs.650-1200. However, from the affidavit-in-reply, it is clear that sufficient guidelines are prescribed by way of

considering appropriate service record of last five years and, therefore, it cannot be said that no guidelines are prescribed for the purpose of finding out merit and efficiency of an Officer. Considering the aforesaid aspect of the matter, I do not find any substance in the petition and it cannot be said that any illegality is committed by the Government in not giving promotion to the petitioner in the grade of Rs.650-1200, which is to be given on the basis of merit-cum-efficiency. This court cannot sit in appeal over the decision taken by the Committee and even the decision of the Committee is approved by the GPSC. As stated earlier, the petitioner has not even joined the Officers, whose promotion is under challenge.

8. On all the above grounds, the petition deserves to be dismissed and it is accordingly dismissed. Rule is discharged. Interim relief is vacated. No costs.

19th November, 2003 (P.B. Majmudar, J.)

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(apj)